

Mr. Ray's copy

TERRY GODDARD  
ARIZONA ATTORNEY GENERAL  
Firm Bar No. 14000

Kevin D. Ray, No. 007485  
Education and Health Section Chief  
Kim S. Anderson, No. 010584  
Debra G. Sterling, No. 023837  
Assistant Attorneys General  
1275 West Washington Street  
Phoenix, Arizona 85007-2926  
Telephone: (602) 542-8328  
Fax: (602) 364-0700

*Attorneys for Defendants State of Arizona,  
State Board of Education, and  
Superintendent Tom Horne*

**COPY**

OCT 22 2007



MICHAEL K. JEANES, CLERK  
DEPUTY CLERK

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

GILBERT UNIFIED SCHOOL  
DISTRICT, NO. 41,

Plaintiff,

v.

STATE OF ARIZONA, STATE BOARD OF  
EDUCATION, and TOM HORNE,  
Superintendent of Public Instruction, in his  
official capacity,

Defendants.

No. CV2007-017981

**VERIFIED ANSWER OF  
DEFENDANTS STATE OF  
ARIZONA, STATE BOARD OF  
EDUCATION, and TOM HORNE,  
Superintendent of Public  
Instruction, in his official capacity**

(Hon. Thomas Dunevant, III)

The Defendants, State of Arizona ("State"), State Board of Education ("SBE"), and Tom Horne, in his official capacity as Superintendent of Public Instruction ("Horne") (collectively referred to as "Defendants"), by and through undersigned counsel, and pursuant to Rule 12, Arizona Rules of Civil Procedure, hereby submit their Answer in response to Plaintiff's Complaint. Defendants deny any and all allegations made in Plaintiff's Complaint not specifically admitted to herein. Defendants admit, deny and allege as follows:

## INTRODUCTION

1  
2 1. Defendants admit the following allegations contained in paragraph 1 of the  
3 Complaint: 1) that the Career Ladder Program ("Program") is a performance incentive  
4 program for teachers as described in A.R.S. §15-918, *et seq.*; 2) that the Program  
5 provided over \$74 million in funding during the 2006-2007 school year to the 28 Arizona  
6 school districts participating in the Program. Defendants deny the remaining allegations  
7 contained in paragraph 1 of the Complaint.

8 2. Defendants admit the allegation contained in paragraph 2 of the Complaint  
9 that in October 2006, Plaintiff Gilbert Unified School District, No. 41 ("Gilbert Public  
10 Schools" or "Plaintiff") contacted the Arizona Department of Education ("DOE" or the  
11 "Department") and expressed its desire to participate in the Program. Defendants deny  
12 the remaining allegations contained in paragraph 2 of the Complaint as they do not  
13 accurately reflect the contents of Exhibit 2 that was attached to the Complaint.  
14 Defendants affirmatively assert that upon receiving Gilbert's letter dated October 4,  
15 2006, DOE informed Gilbert that at this time no new districts were being allowed to  
16 petition for funding. Defendants further affirmatively assert that all school districts were  
17 given the opportunity to apply to participate in the Program several times prior to 1994.

18 3. Defendants are without sufficient knowledge or information to form a  
19 belief as to the truth of the allegations contained in paragraph 3 of the Complaint and  
20 therefore deny the same.

21 4. Defendants admit the allegation contained in paragraph 4 of the Complaint  
22 asserting that since 1994 the Arizona Legislature has not appropriated additional funds  
23 that would allow new school districts into the Program. Defendants are without sufficient  
24 knowledge or information to form a belief as to the truth of the remaining allegations  
25 contained in paragraph 4 of the Complaint and therefore deny the same.

26 5. Defendants admit the allegation contained in paragraph 5 of the Complaint  
27 asserting that 28 school districts participate in the Program and receive funding through  
28

1 the Program. Defendants deny the remaining allegations contained in paragraph 5 of the  
2 Complaint.

3 6. Defendants deny the allegations contained in paragraph 6 of the Complaint.

4 7. The allegations contained in the first sentence of paragraph 7 of the  
5 Complaint state a legal conclusion which does not require an answer. The second  
6 sentence of paragraph 7 of the Complaint is an argumentative statement of Plaintiff's  
7 intentions in filing this action which does not require an answer. Without waiving the  
8 foregoing, Defendants deny that Plaintiff is entitled to any relief as alleged in paragraph 7  
9 of the Complaint and therefore deny the allegations contained in paragraph 7 of the  
10 Complaint.

#### 11 **PARTIES AND JURISDICTION**

12 8. Defendants admit the allegations contained in the first sentence of  
13 paragraph 8 of the Complaint. Defendants are without sufficient knowledge or  
14 information to form a belief as to the truth of the remaining allegations contained in  
15 paragraph 8 of the Complaint and therefore deny the same.

16 9. Defendants deny the allegations contained in paragraph 9 of the Complaint  
17 because the allegations do not accurately reflect the contents of Exhibits 1 and 2 attached  
18 to the Complaint.

19 10. Defendants are without sufficient knowledge or information to form a  
20 belief as to the truth of the allegations contained in paragraph 10 of the Complaint and  
21 therefore deny the same.

22 11. Defendants deny the allegations contained in paragraph 11 of the  
23 Complaint.

24 12. The allegation contained in paragraph 12 of the Complaint is a legal  
25 conclusion which does not require an answer. Without waiving the foregoing,  
26 Defendants deny the allegation contained in paragraph 12 of the Complaint because it  
27 does not accurately reflect Arizona law.

1           13.    Answering the allegations contained in paragraph 13 of the Complaint,  
2 Defendants admit that the quoted statements appear in A.R.S. § 15-203(1), (8), & (11).  
3 Defendants affirmatively assert that the State Board of Education's duties and  
4 responsibilities are broader under Arizona law than those referenced in paragraph 13 of  
5 the Complaint. Defendants deny the allegation contained in Paragraph 13 of the  
6 Complaint that the Defendant State Board of Education is expressly charged with  
7 "approv[ing] additional districts to budget for a career ladder program ... until all  
8 interested and qualified districts are included." Defendants affirmatively assert that the  
9 language quoted is not the complete sentence as it appears in the referenced legislation.  
10 Defendants affirmatively assert that the State Board of Education's authority to approve  
11 additional districts pursuant to 1990 Ariz. Sess. Laws, 2<sup>nd</sup> Reg. Sess., ch. 319, § 16, was  
12 amended by 1992 Ariz. Sess. Laws, 2<sup>nd</sup> Reg. Sess., ch. 246, § 3.

13           14.    Answering the allegations contained in paragraph 14 of the Complaint,  
14 Defendants admit that the quoted statements appear in A.R.S. § 15-251(1), (3), & (5).  
15 Defendants affirmatively assert that the duties and responsibilities of Defendant Tom  
16 Horne, Superintendent of Public Instruction, are broader under Arizona law than those  
17 referenced in paragraph 14 of the Complaint.

18           15.    Defendants deny the allegations contained in paragraph 15 of the  
19 Complaint asserting that the Court has jurisdiction over this action. Defendants  
20 affirmatively assert that the claims state a non-justiciable controversy. The remaining  
21 allegations contained in paragraph 15 of the Complaint state a legal conclusion and a  
22 request for relief, neither of which require an answer. Without waiving the foregoing,  
23 Defendants deny that Plaintiff is entitled to any relief as alleged in paragraph 15 of the  
24 Complaint, and therefore deny the allegations contained in paragraph 15 of the  
25 Complaint.

#### 26                                   FACTUAL BACKGROUND

27           16.    Defendants deny the allegations contained in paragraph 16 of the  
28 Complaint.

1           17. Defendants admit the allegations contained in paragraph 17 of the  
2 Complaint.

3           18. Defendants admit the allegations contained in paragraph 18 of the  
4 Complaint.

5           19. Defendants admit the allegation contained in paragraph 19 of the  
6 Complaint.

7           20. Answering the allegations contained in paragraph 20 of the Complaint,  
8 Defendants deny the quoted language appears in 1990 Ariz. Sess. Laws, 2<sup>nd</sup> Reg. Sess.,  
9 ch. 319, § 16. Defendants affirmatively assert that the language quoted is not the  
10 complete sentence as it appears in the referenced legislation. Defendants affirmatively  
11 assert that the State Board of Education's authority to approve additional districts  
12 pursuant to 1990 Ariz. Sess. Laws, 2<sup>nd</sup> Reg. Sess., ch. 319, § 16, was amended by 1992  
13 Ariz. Sess. Laws, 2<sup>nd</sup> Reg. Sess., ch. 246, § 3.

14           21. Answering the first sentence of the allegations contained in paragraph 21,  
15 Defendants state that it is a legal conclusion which does not require an answer.  
16 Answering the second sentence of the allegations contained in paragraph 21, Defendants  
17 admit the quoted language appears in 1992 Ariz. Sess. Laws, 2<sup>nd</sup> Reg. Sess., ch. 246, § 3.  
18 However, Defendants affirmatively assert that the language quoted is not the complete  
19 sentence as it appears in the referenced legislation.

20           22. Answering the allegations contained in the first and second sentences of  
21 paragraph 22 of the Complaint, Defendants deny that that no additional appropriations  
22 have been made since 1994, and that no further expansion has ever been authorized; the  
23 balance of these two sentences are legal conclusions which do not require an answer.  
24 Without waiving the foregoing, Defendants deny any remaining allegations. Defendants  
25 admit the allegations contained in the third sentence of paragraph 22 of the Complaint.

26           23. Defendants admit the allegation contained in paragraph 23 of the Complaint  
27 that in October 2006, Plaintiff sent a letter to the Arizona Department of Education  
28 ("DOE" or the "Department") and requested the forms necessary to apply to participate

1 in the Program. Defendants deny the remaining allegations contained in paragraph 23 of  
2 the Complaint because they do not accurately reflect the contents of Exhibit 2 that was  
3 attached to the Complaint. Defendants affirmatively assert that upon receiving Gilbert's  
4 letter dated October 4, 2006, DOE informed Gilbert that at this time no new districts  
5 were being allowed to petition for funding. Defendants further affirmatively assert that  
6 all school districts were given the opportunity to apply to participate in the Program  
7 several times prior to 1994.

8         24. Defendants are without sufficient knowledge or information to form a  
9 belief as to the truth of the allegations contained in paragraph 24 of the Complaint and  
10 therefore deny the same.

11         25. Defendants admit the allegations contained in the first sentence of  
12 paragraph 25 of the Complaint. Defendants are without sufficient knowledge or  
13 information to form a belief as to the truth of the remaining allegations contained in  
14 paragraph 25 of the Complaint and therefore deny the same.

15         26. Defendants admit the allegations contained in paragraph 26 of the  
16 Complaint.

17         27. Defendants admit the allegations contained in paragraph 27 of the  
18 Complaint.

19         28. Defendants admit the allegations contained in paragraph 28 of the  
20 Complaint asserting that under A.R.S. §§ 15-918.04 and 918.05, funding for the Program  
21 is derived by a formula based on student count. Defendants admit the allegations  
22 contained in paragraph 28 of the Complaint asserting that once the Program has been  
23 fully implemented, Career Ladder districts may increase their base level funding by  
24 5.5%. Defendants deny the remaining allegations contained in paragraph 28 of the  
25 Complaint.

26         29. Defendants deny the allegations contained in paragraph 29 of the  
27 Complaint.  
28

1           30. Defendants admit only the factual allegations contained in paragraph 30 of  
2 the Complaint.

3           31. Defendants admit the allegations contained in paragraph 31 of the  
4 Complaint.

5           32. Defendants are without sufficient knowledge or information to form a  
6 belief as to the truth of the allegations contained in paragraph 32 of the Complaint and  
7 therefore deny the same.

8           33. Defendants admit only the factual allegations contained in paragraph 33 of  
9 the Complaint.

10          34. Defendants admit the allegations contained in paragraph 34 of the  
11 Complaint.

12          35. Defendants deny the allegations contained in paragraph 35 of the  
13 Complaint.

14                   **ARIZONA CONSTITUTION'S GENERAL AND UNIFORM CLAUSE**

15          36. Answering the allegations contained in paragraph 36 of the Complaint,  
16 Defendants admit only that the quoted statement appears in the Arizona Constitution at  
17 Art. XI, § 1.

18          37. The allegations contained in paragraph 37 of the Complaint state legal  
19 conclusions which do not require an answer. Without waiving the foregoing, Defendants  
20 deny the allegations contained in paragraph 37 of the Complaint.

21          38. The allegations contained in paragraph 38 of the Complaint state legal  
22 conclusions which do not require an answer. Without waiving the foregoing, Defendants  
23 deny the allegations contained in paragraph 38 of the Complaint.

24          39. Defendants admit the allegation contained in paragraph 39 of the Complaint  
25 that 28 school districts participate in the Program. Defendants deny the allegation  
26 contained in paragraph 39 of the Complaint that 209 districts were denied the opportunity  
27 to participate in the Program since 1994. Defendants admit the remaining factual  
28

1 allegations related to the funding of the Program for the fiscal years 2005-2006 and 2006-  
2 2007.

3 **ARIZONA CONSTITUTION'S PROHIBITION**  
4 **AGAINST SPECIAL LEGISLATION**

5 40. Answering the allegations contained in paragraph 40 of the Complaint,  
6 Defendants admit that the quoted language appears in the Arizona Constitution at Art. IV,  
7 Pt. 2, § 19. The remaining allegation states a legal conclusion which does not require an  
8 answer. Without waiving the foregoing, Defendants deny the allegations contained in  
9 paragraph 40 of the Complaint.

10 41. The allegations contained in paragraph 41 of the Complaint state legal  
11 conclusions which do not require an answer. Without waiving the foregoing, Defendants  
12 deny the allegations contained in paragraph 41 of the Complaint.

13 42. The allegations contained in paragraph 42 of the Complaint state legal  
14 conclusions which do not require an answer. Without waiving the foregoing, Defendants  
15 deny the allegations contained in paragraph 42 of the Complaint.

16 **FIRST CLAIM FOR RELIEF**

17 43. Answering the allegations contained in paragraph 43 of the Complaint,  
18 Defendants restate and incorporate herein their Answers to paragraphs 1 through 42 of  
19 the Complaint as if set forth fully herein.

20 44. Answering the allegations contained in paragraph 44 of the Complaint,  
21 Defendants deny that Plaintiff meets the requirements as set out in A.R.S. § 12-1831 and  
22 Rule 57, Ariz. R. Civ. P., necessary to assert any claims or is entitled to any relief as  
23 alleged under those sources of law.

24 45. Answering the allegations contained in paragraph 45 of the Complaint,  
25 Defendants deny that the Court has jurisdiction and affirmatively assert that the claims  
26 state a non-justiciable controversy.



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- 2
- 3
- 4

5  
6  
7  
8

9  
10  
11

## 12

13  
14  
15

16  
17  
18  
19

## 20

21  
22  
23

24  
25  
26  
27  
28

1           53. The allegations contained in paragraph 53 of the Complaint state legal  
2 conclusions which do not require an answer. Without waiving the foregoing, Defendants  
3 deny the allegations contained in paragraph 53 of the Complaint.

4           54. The allegations contained in paragraph 54 of the Complaint state legal  
5 conclusions which do not require an answer. Without waiving the foregoing, Defendants  
6 deny the allegations contained in paragraph 54 of the Complaint.

7           55. Defendants deny the allegations contained in paragraph 55 of the  
8 Complaint.

9           56. Defendants deny allegations in the Complaint not specifically admitted  
10 herein.

11                           **RESPONSE TO RELIEF REQUESTED**

12           57. Answering the allegations contained in Plaintiff's Complaint, Prayer for  
13 Relief, Defendants restate and incorporate herein their Answers to paragraphs 1 through  
14 55 of the Complaint as if set forth fully herein. Defendants deny that Plaintiff is entitled  
15 to the relief sought in the Complaint's Prayer for Relief, paragraphs A-E.

16                           **AFFIRMATIVE DEFENSES**

17           58. As an affirmative defense, Defendants state that Plaintiff fails to state a  
18 claim for which relief can be granted.

19           59. As an additional affirmative defense, Defendants state that Plaintiff's  
20 claims are barred because the issues raised in the Complaint are non-justiciable matters  
21 left to the discretion and authority of the Legislative branch of the government.

22           60. As an additional affirmative defense, Defendants state that Plaintiff lacks  
23 standing to bring this action.

24           61. As an additional affirmative defense, Defendants plead the defense of  
25 immunity provided by Arizona statutes or law, including A.R.S. § 12-820, *et seq.*

26           62. On information and belief, the claims of Plaintiff are barred in whole or in  
27 part by failure to exhaust administrative remedies.  
28



1 ORIGINAL of the foregoing filed  
2 this 22<sup>nd</sup> day of October, 2007, with:

3 Clerk of the Superior Court  
4 Civil Division  
5 Maricopa County Superior Court  
6 201 West Jefferson Street  
7 Phoenix, Arizona 85003

8 and a **COPY** of the foregoing mailed *or Delivered via E-Message*  
9 this 22<sup>nd</sup> day of October 2007, to:

10 Hon. Thomas Dunevant, III  
11 Superior Court Judge  
12 East Court Building – ECB 412  
13 101 W. Jefferson Street  
14 Phoenix AZ 85003-2243

15 Paul F. Eckstein  
16 Lee Stein  
17 Rebecca K. Setlow  
18 M. Bridget McMullen  
19 PERKINS COIE BROWN & BAIN P.A.  
20 2901 N. Central Avenue, Suite 2000  
21 Phoenix, Arizona 85012  
22 *Attorneys for Plaintiff*

23 By Robert Curry, Legal Secretary II  
24 #72980; P0012007003238  
25  
26  
27  
28


- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

I, Margaret Garcia-Dugan, being first duly sworn upon her oath, deposes and says:

- Further affiant sayeth not.

SUBSCRIBED AND SWORN to before me this 19<sup>th</sup> day of October, 2007.

My Commission Expires:


 **DEBRA C. SCORDATO**  
**NOTARY PUBLIC-ARIZONA**  
**MARICOPA COUNTY**  
*My Comm. Expires July 29, 2008*

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

I, Vincient Yanez, being first duly sworn upon his oath, deposes and says:

1. That I am the Executive Director of the Arizona State Board of Education, and I am authorized to verify the Answer to Plaintiff's Complaint on behalf of the State Board of Education.
2. That I have read the Answer and know the contents thereof.
3. That the statements and information contained in the Answer are true to the best of my knowledge.

Further affiant sayeth not.

  
Vincient Yanez  
Executive Director  
Arizona State Board of Education

SUBSCRIBED AND SWORN to before me this 22 day of OCTOBER, 2007.

Kelonna M. Hilling  
NOTARY PUBLIC

My Commission Expires:

OCTOBER 23, 2010

